

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

<b>BIENVENIDO FRANCO,</b>	)	
<b>Individually, and on Behalf of All</b>	)	
<b>Others Similarly Situated,</b>	)	
	)	<b>Case No. 07 CV 3956 (JS/AKT)</b>
<b>Plaintiffs,</b>	)	
	)	<b>STIPULATION TO ISSUE 216(b)</b>
<b>v.</b>	)	<b>NOTICE AND VOLUNTARY</b>
	)	<b>WITHDRAWAL OF PLAINTIFF'S</b>
<b>LEND AMERICA, INC.,</b>	)	<b>PENDING MOTION TO AMEND</b>
	)	<b>THEIR COMPLAINT</b>
<b>Defendant.</b>	)	
	)	

Plaintiff, BIENVENIDO FRANCO, individually and on behalf of all others similarly situated, ("Plaintiff") and Defendant Ideal Mortgage Bankers, Ltd., d/b/a Lend America ("Lend America"), stipulate to the entry of an order: 1) Issuing Notice of this Lawsuit; 2) Withdrawing Plaintiff's Motion for Leave to File an Amended Complaint and, 3) Staying Formal Discovery and Exchanging Informal Discovery Pending Further Settlement Discussions and Mediation. In support of this Motion, the parties state as follows:

1. Plaintiff filed his Original Complaint on September 21, 2007. He alleged that Lend America failed to pay him and other similarly-situated Loan Officers minimum wages and overtime in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*
2. On March 4, 2008, Plaintiff filed a Motion for Leave to File an Amended Complaint.
3. On March 18, 2008, Lend America responded. While Lend America did not object to Plaintiff's motion insofar as it sought to correct Lend America's corporate name, it did object to his request for leave to add New York state law claims and name officers of Lend America as individual defendants. Plaintiff filed his Reply in support of his Motion to Amend on March 25,

2008. This motion remains pending.

4. Plaintiff filed his Motion to Proceed as a Collective Action and Issue Notice on May 14, 2008. Lend America responded on June 16, 2008 and Plaintiff is scheduled to file his reply on July 28, 2008.

5. Shortly after Plaintiff filed his Motion to Proceed as a Collective Action and Issue Notice, the parties began discussions to attempt to arrive at an agreed-upon Notice with an eye toward possible resolution of this action. After exchanging extensive comments and revisions, the parties have agreed to a Notice, which provides accurate and timely notice of this lawsuit to all those similarly situated.

6. The parties have attached hereto a proposed Notice and Opt-In Consent Form. (See Exhibits A & B).

7. At Plaintiff's request, Lend America has agreed to identify a list of employees who were designated, paid or employed as Loan Officers or other similarly titled positions since September 21, 2004 who have not already had their claims for minimum wage and/or overtime previously adjudicated, to inform them of their right to opt-in to this lawsuit.

8. The Parties request that this Court enter an order:

- a. Conditionally certifying this case as a Section 216(b) collective action;
- b. Requiring Lend America to provide Plaintiff's counsel with the names, dates of employment, last known addresses and telephone numbers of all Loan Officers or other similarly titled positions since September 21, 2004;
- c. Requiring Lend America to provide Plaintiff's counsel with the social security numbers of any putative opt-in members: (a) for whom it lacks an address or; (b) to whom Plaintiff's attorneys have sent a notice of this collective action and received a return envelope indicating that the putative opt-in members no longer reside at the address(es) Lend America has provided; or (c) whose address has otherwise been documented to be outdated or incorrect. Lend America shall provide the social security numbers within two business days of receipt of a copy

of the envelope or a written statement from Plaintiff's counsel stating the reasons why the address is believed to be incorrect. The social security numbers provided shall be used for the sole purpose of locating the best possible contact information for the potential opt-in members and remain subject to the protective order in place;

- d. Authorizing Plaintiff's counsel to use skip tracing, if necessary to obtain the best possible contact information for the potential opt-in members;
  - e. Authorizing Plaintiff's counsel to distribute notice via first class U.S. Mail only;
  - f. Authorizing Plaintiff's counsel to include the agreed-to Opt-In Consent Form with each Notice mailed, but precluding the enclosure of anything else in the Notice mailings, such as cover letters;
  - g. Prohibiting Plaintiff's counsel from soliciting potential collective action members by initiating any verbal communications with potential opt-in members who are Lend America employees as of the date of this Stipulation, during the agreed-to opt-in period;
  - h. To the extent there is any verbal communication during the agreed-to opt-in period between Plaintiff's counsel and potential opt-in members who are former Lend America employees as of the date of this Stipulation, the subject of such communications will be limited to the verification of the potential opt-in member's receipt of the Notice materials by Plaintiff's counsel and the response of Plaintiff's counsel to any questions by the potential opt-in member regarding this lawsuit; and
  - i. Prohibiting Plaintiff's counsel from more than two mailings of the Notice materials, except in the event that Notice materials are returned as undeliverable. In such an instance, Plaintiff's counsel may engage a vendor to secure follow-up addresses for a third mailing of the approved Notice materials, which may not be made more than sixty days after the first Notice mailing.
9. The parties agree to treat all information acquired by this stipulation as "confidential" and use it only as reasonably necessary for preparation and trial of this action, including any appeal or retrial, and shall not be used for any other purpose, including without limitation, any other litigation or proceeding or any business, competitive, or governmental purpose or function.
10. Plaintiff agrees to voluntarily withdraw his pending motion to Motion for Leave to File an Amended Complaint. Lend America stipulates to the filing of an Amended Complaint for the

sole purpose of correcting Lend America's corporate name. (See Exhibit C).

11. The Parties agree to stay discovery pending further settlement talks and mediation after the opt-in period. In addition to the information set forth above, Lend America agrees to provide Plaintiff with informal discovery necessary for Plaintiff to prepare a demand, including the dates of employment, weekly and annual compensation paid and any time records it has for all individuals who opt-in to this lawsuit. Lend America agrees to provide this information within twenty-one (21) calendar days after the close of the opt-in period.

12. The Parties agree that the conditional certification of this case as a Section 216(b) collective action under the FLSA at this stage of the litigation is without prejudice to Lend America's proffering of its arguments against continued certification at the second, or decertification, stage of the proceedings, after substantial and reciprocal discovery has been completed.

Dated: July 10, 2008

ERIK H. LANGELAND, P.C.

/s/ Erik H. Langeland  
Erik H. Langeland, P.C.  
500 Fifth Avenue, Suite 1610  
New York, NY 10110  
(212) 354-6270  
(212) 898-9086 (Fax)  
elangeland@langelandlaw.com

James B. Zouras  
Ryan F. Stephan  
STEPHAN ZOURAS, LLP  
205 N. Michigan Avenue, Suite 2560  
Chicago, IL 60601  
(312) 233-1550  
(312) 233-1560 (Fax)  
lawyers@stephanzouras.com

**ATTORNEYS FOR PLAINTIFF**

Dated: July 10, 2008

WEINER BRODSKY SIDMAN KIDER, PC

Application Granted. The Court Conditionally certifies this action as a collective action pursuant to 29 U.S.C 216(b) and authorizes Plaintiff to issue the proposed Notice. The Clerk of the Court is directed to terminate the pending Motion to Certify Class (38) and the Motion to Amend the Complaint (23). Additionally, the Court revokes its Order referring Plaintiff's motion to amend (52).

/s/ Mitchel H. Kider

Mitchel H. Kider  
Weiner Brodsky Sidman Kider PC  
1300 19th Street, NW, Fifth Floor  
Washington, DC 20036  
(202) 628-2000  
(202) 628-2011 (Fax)  
kider@wbsk.com

Daniel F. Markham  
Coughlin Duffy LLP  
Wall Street Plaza  
88 Pine Street, 5th Floor  
New York, NY 10005  
(212) 483-0105  
(212) 480-3899 (Fax)  
dmarkham@coughlinduffy.com

ATTORNEYS FOR DEFENDANT

Dated: AUG 13 2008

So Ordered:

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.  
Central Islip, New York